

NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 06-101

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Enforcement

VMS Data Access and Dissemination Policy

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OPR: EN (D. Jones)

Certified by: EN (D. Jones)

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SUMMARY OF REVISIONS: Technical revision by deleting ambiguous references to NAO 216-100. The VMS data policy does not modify the scope or effect of NAO 216-100.

Introduction.

This policy establishes procedures to access, disseminate and manage information collected through NOAA's Vessel Monitoring System (VMS).

The National Oceanic and Atmospheric Administration (NOAA) Fisheries Service Office for Law Enforcement (OLE) has been delegated the responsibility to develop, operate and manage NOAA's VMS. Within NOAA Fisheries, OLE is responsible for ensuring the collection, storage and security of original VMS data in a manner which preserves the integrity and credibility of the data commensurate with standards that ensure the data's acceptance for use in investigative and legal proceedings, protected resources and fisheries management, and science.

VMS collects data such as on participating vessels' identity, location and activity throughout the U.S. Exclusive Economic Zone, Pacific and Atlantic Oceans, and other bodies of water for enforcement, management and science purposes pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Authorized use of and access to VMS data is governed by the Magnuson-Stevens Act, its implementing regulations found at 50 CFR 600.405-425, and NOAA Administrative Order (NAO) 216-100.

NOAA Fisheries uses this data for enforcement, fisheries management, science and research.

NOAA Fisheries intends further to develop and use the VMS system as efficiently and effectively as is practical and within the full scope of purpose and utility that the technology may provide.

Objective. The purpose of this policy is to ensure lawful and timely access to, and dissemination and management of, VMS information within NOAA Fisheries and to our external partners.

Authorities and Responsibilities. This directive establishes the following authorities and responsibilities:

Legal Restrictions: Use and dissemination of VMS information is subject to the confidentiality provisions of Section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act and NAO 216-100.

Guidelines and Procedures: It is the policy of NOAA Fisheries to utilize VMS to aid in monitoring, control and surveillance of certain fishing vessels that are managed under U.S. fishery management programs and other vessels that may participate.

Authorized Users and Non-Disclosure Agreements: Each authorized user must provide a current, written and signed “Protection of Confidential Fisheries Statistics” agreement (or evidence thereof) to OLE before gaining access to VMS information.

Use, Storage and Disposal of VMS Information: VMS information must be used, stored, and archived or disposed of as authorized and prescribed by legal provisions cited above.

References. This policy directive is supported by the references and glossary of terms listed in Attachment 1.

/s/ June 7, 2006
William T. Hogarth, Ph.D. Date
Assistant Administrator
for NOAA Fisheries

Attachment 1

Magnuson-Stevens Fishery Conservation and Management Act 50 CFR 600.405-425

NOAA Administrative Order 216-100

NOAA FISHERIES SERVICE

VMS Data Access and Dissemination Policy

Effective Date: June 17, 2006

Purpose and Background

The National Oceanic and Atmospheric Administration Fisheries Service Office for Law Enforcement (OLE) has been delegated the responsibility to develop, operate and manage NOAA's Vessel Monitoring System (VMS). This policy establishes procedures to access, disseminate and manage information collected through VMS.

VMS collects data from fisheries vessels for enforcement, management and science purposes pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Authorized use of and access to VMS data is governed by Section 402 of the Magnuson-Stevens Act, its implementing regulations found at 50 CFR 600.405-425 and NAO 216-100.

Within NOAA Fisheries, OLE is responsible for ensuring the collection, storage and security of original VMS data in a manner that preserves the integrity and credibility of the data commensurate with evidentiary standards. This will ensure its acceptance in both legal proceedings, and for use by NOAA Fisheries in protected resources, fisheries management, and science based activities.

VMS provides NOAA information about participating vessels' identity, location and activity throughout the U.S. EEZ, Pacific and Atlantic Oceans, and other bodies of water. VMS can provide 24 or more position reports per day, accurate to 100 meters, 365 days per year to continuously and accurately monitor and enforce time and effort regulations, restricted areas, and international boundaries and obligations, and other fishery management measures.

VMS also provides an effective tool to supplement traditional enforcement activities. For example, VMS can be used to provide a comprehensive surveillance framework and to more efficiently direct the limited number of U.S. Coast Guard assets available for fisheries patrols.

The VMS system is also used extensively to collect data for the purposes of fisheries management, science and research. A number of fishery management plans include VMS requirements. VMS information may also be crucial in making determinations within a timely manner whether catch limits within specially designated areas have been reached. As a tool for protected resources, VMS is used to monitor vessel activities in and near critical habitat areas. VMS is also an invaluable data quality control for use in conjunction with NOAA Fisheries observer programs. Use of VMS data for these purposes is expected to increase in the future.

NOAA Fisheries therefore intends further to develop and use the VMS system as efficiently and effectively as is practical and within the full scope of purpose and utility that the technology may provide.

This purpose of this policy is to ensure lawful and timely access to, and dissemination and management of, VMS information within NOAA Fisheries and to our external partners.

Policy Guidance for VMS Information Access, Dissemination and Management

Legal Restrictions

VMS information collected from fishing vessels is considered “information submitted to the Secretary” in compliance with fishery regulations and, therefore, use and dissemination of the information is subject to the confidentiality provisions of Section 402(b) of the Magnuson-Stevens Act. In specific instances VMS data may also be categorized as Law Enforcement Sensitive due to its nexus with on-going investigations. Use and dissemination of VMS information is subject to additional regulations and restrictions found at 50 CFR 600.405-425 and NAO 216-100.

The NOAA Fisheries Office of Law Enforcement (OLE) will document and maintain a list of all authorized users.

Guidelines and Procedures

It is the policy of NOAA Fisheries Service to utilize VMS to aid in monitoring, control and surveillance of certain fishing vessels that are managed under U.S. federal fishery management programs, and other vessels that may participate (voluntarily or otherwise) in the VMS, and to use VMS data for scientific research and management purposes.

The OLE will be responsible for the collection, processing, dissemination, archiving, and/or destroying of VMS information. OLE will provide access to and/or dissemination of VMS information routinely collected to authorized persons. *Information routinely collected* means that information which is required to be collected under the promulgated law or regulation, including all polling times and location information collected by the VMS from fishing vessels.

Under some circumstances, OLE may restrict access to and dissemination of VMS information based on Law Enforcement Sensitive restrictions. For example, this could include information routinely collected and/or specific polling of a vessel over and above the normal polling sequence for such vessels, or additional information collected or generated from a routine VMS investigative operation, such as communications with the vessel. It shall be the responsibility of OLE to assure that such restrictions occur only as necessary on a case by case basis and only for the minimum time necessary to meet enforcement mission requirements. In determining the need to invoke this restriction OLE will give careful consideration to the operational needs of other agency components and the potential that such restrictions may diminish or otherwise hamper the mission of others dependent upon the information. In these cases, OLE will notify any impacted office prior to restriction of access.

Though OLE is responsible for the operation of the VMS system, any significant expenses and support resources necessary to effect the distribution of VMS data to entities external to NOAA will be the responsibility of those entities unless otherwise provided for within budgetary and planning decisions. The OLE will support and facilitate a cooperative and participatory approach toward assisting other offices.

Authorized Users and Non-Disclosure Agreements

Pursuant to NAO 216-100, each authorized user must provide a current, written and signed "Protection of Confidential Fisheries Statistics" agreement (or evidence thereof) to OLE before gaining access to VMS information.

Violations of NAO 216-100 will result in immediate termination of access and/or dissemination of VMS data along with the return of all data previously provided.

VMS Information

a. Use of Information

VMS information requested by an authorized user may be used only for the purpose authorized by legal provisions cited above. Access to the VMS is subject to cancellation and sanctions for improper dissemination of information.

b. Storage of Information

All VMS information must be maintained in a secure records environment to prevent unauthorized access or dissemination.

c. Method of Disposal

VMS information must be used, stored, and archived or disposed of as authorized and prescribed by legal provisions cited above.